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CENTRAL ADMINISTRATIVE TRIBUNAL : HYDERABAD BENCH: HYDERABAD

O.A NO. 1296 OF 1996

BETWEEN:

D. Arjuna Rao and 7 Others

...APPLICANTS

AND

The Chief General Manager
Telecom., Hyderabad and 2 Others

...RESPONDENTS

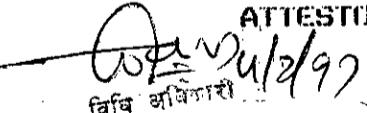
REPLY AFFIDAVIT FILED ON BEHALF OF RESPONDENTS

I, G.V.R. Setty S/o G. Govinda Setty aged 49 years, R/o Hyderabad do hereby solemnly affirm and state on oath as follows:

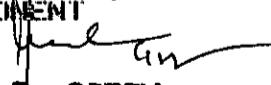
I am working as Assistant General Manager (Legal) in the office of Chief General Manager Telecom., APCircle Hyderabad-1 as such I am well acquainted with the facts of the case. I am filing this reply affidavit on behalf of all the Respondents and I am authorised to do so. The material averments made by the applicants are denied save those that are specifically admitted hereunder.

1. It is submitted that the Govt. of India, Dept. of Pension and Pensioners Welfare through O.M.No.7/1/95-P&PW(F) dated 14.07.95 issued instructions based on the interim report of the Fifth Pay Commission to treat part of the dearness allowance as dearness pay for reckoning emoluments for the purpose of retirement gratuity/death gratuity under CCS(Pension)Rules, 1972 in the case of Central Govt. Employees who retire or die on or after 1.4.1995.

ATTESTOR


विवि अधिकारी
LAW OFFICER
म. प. दूरसंचार औ.प. का. कार्यालय
O/o. C. G. M. Tel. com. A. P.
हैदराबाद/Hyderabad-500 031

DEPONENT


G. V. R. SETTY
A G M. (Legal)
G.M. Telecom, A.P. Hyd

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The ceiling on the maximum amount of retirement gratuity/death gratuity has been raised from Rs.1 lakh to Rs.2.50 lakhs with effect from 1st April, 1995.

2. It is submitted in addition to the above, the Govt. of India had sanctioned two installments of Interim Relief to Central Govt. Pensioners/Family Pensioners with effect from 1st April 1995, the first installment is Rs.50/- per month and the second installment is of 10% of basic pension/family pension subject to a minimum of Rs.50/- per month. The above benefit of interim relief is extended also to recipients of ex-gratia pension.

3. It is submitted that the above orders were issued by the Govt. of India after considering various aspects involved.

4. It is submitted that the pension and other retirements benefits of the Central Govt. Employees are funded by the Government by making annual budgetary allocation. There is no matching contribution by the employees (except in the case of Contributory Provident Fund Scheme), for meeting any part of the pensionary benefits like pension including family pension and gratuity. No pension fund as such has been set up by the Government for this purpose so far with substantial improvement effected in the pension structure over the past few years and increase in the number of pensioners, there has been substantial increase in the budgetary requirement for payment of pensions to Central Govt. civilian and defence service retired personnel. (Annexure R-1).

ATTESTOR

विवि. अवृत्ति 1/2/97
LAW OFFICE
J. S. प्र. दूरसंचार ओ.प. का.कार्यालय
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for C.G.M. Telecom, A.P. Hyd.

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5. It is submitted that whenever a new benefit is sanctioned by the Government, it becomes necessary to provide a cut off date. Not only in the matter of revision of the pensionary benefits, in other matters like revision of pay scale etc., the cut off date has to be fixed for extending the benefit on some rational and reasonable basis. It is, therefore, not possible to extend any new benefit either to pensioners or to Govt. servants without a cut off date.

6. It is submitted that the Hon'ble Supreme Court in their judgement dated 17.3.1994 in Civil Appeal No.517 of 1987(SCCII 1994)4] (Union of India Versus P.N.Menon and others) has held that the Govt. of India has the right to fix cut off date for extending certain benefits to the employees. In para 8 of the Judgement their lordships observed:

"Whenever the Govt. or any Authority which can be held to be a State with the meaning of Article 12 of the Constitution, frames a scheme for persons who have superannuated from service, due to many constraints, it is not always possible to extend the same benefits to one and all, irrespective of the dates of superannuation. As such any revised scheme in respect of post- retirement benefits, if implemented with a cut-off date, which can be held to be reasonable and rational in the light of Article 14 of the Constitution, need not be held to be invalid. It shall not amount to 'Picking out a date from the Hat', as was said by this Court in the case of D.R.Nim Vs Union of India in

G. V. R. SETTY
विधि अधिकारी 4/2/97
LAW OFFICER
म. न. प. दूरसंचार अधिकारी का कार्यालय
O/o, C. G. M. Tel.com, A. P.
हैदराबाद/Hyderabad-500 001.

DEPARTMENT
G. V. R. SETTY
A.G.M. (Legal)
for C.G.M. Telecom, A.P. Hyd.

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connection with fixation of seniority. WHENEVER A REVISION TAKES PLACE, A CUT-OFF DATE BECOMES IMPERATIVE, BECAUSE BENEFIT HAS TO BE ALLOWED WITHIN THE FINANCIAL RESOURCES AVAILABLE WITH THE GOVT."

It is submitted that their lordships further observed in Para 14 of their judgement as follows:

"According to us... Not only in matters of revising the pensionary benefits, but even in respect of revision of scales of Pay, a cut-off date on some rational or reasonable basis, has to be fixed for extending the benefits. This can be illustrated. The Govt. decides to revise the Pay Scale of its employees and fixes the 1st day of January of the next year for implementing the same or the 1st of January of the last year. In either case a big section of its employees are bound to miss the revision of the scales of Pay, having superannuated before that date. An employee, who has refused on 31st December of the year in question, will miss that Pay Scale only by a day, which may affect his pensionary benefits throughout his life. No scheme can be held to be fool-proof, so as to cover and keep in view all persons who were at one time in active service. As such the concern of the court shall only be, while examining any such grievance, to see, as to whether a particular date, for extending a particular benefit of Scheme, has been fixed, on objective and rational consideration."

7. It is submitted that the Hon'ble Supreme Court in the aforesaid judgement has given a verdict in unambiguous terms that

ATTESTOR


विवि अधिकारी
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1. म. प. न्यायाल अ.प्र का कार्यालय
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for C.G.M. Telecom, A.P. Hyd.

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fixation of a cut off date for extending certain benefits to the employees/pensioners in the facts and circumstances of the matters covered by the judgement supra is not violative of the Article 14 of the Constitution of India.

8. It is submitted in reply to Para 4 and 5 of the OA that the Fifth Central Pay Commission after considering various aspects submitted the Interim Report and the Govt. of India after careful consideration of the recommendation had issued the instructions through the impugned order.

9. In reply to Para 6 of the OA it is submitted that the Department of Pension & Pension Welfare in the Ministry of Personnel is attending to the grievances of the Pensioners. This Department is attending to (i) the representations pertaining to non-sanction or delay for Sanction/Payment or incorrect computation of various retirement benefits and (ii) representations pertaining to demands for new benefits or modifications of provisions of Pension rules. The applicants have not represented their grievance to the Department of Pension & Pension Welfare.

It is submitted, in view of the above, the applicant did not make out any case under any fact, rule or law. Hence, it is requested that the Hon'ble Tribunal may be pleased to dismiss the OA and pass such other order or orders deemed fit in the circumstances of the case.

DEPONENT



G. V. R. SETTY

A G M. (Legal)

or OGM. Telecom. A.P. Hyd.

Solemnly sworn and signed
his name on this 4th day of
January, 1997 before me.

Febraury

BEFORE ME


ATTESTOR

4/1/97

मिशन अधिकारी

LAW OFFICER

4. क्र. क्र. इंस्पेक्टर ऑफिस फा. फारी नं.

4. क्र. क्र. G. M. Telecom. A. P.

हैदराबाद/Hyderabad-500 001

O.A. 1296/96

To

1. The Chief General Manager,
Dept. of Telecommunications,
Telecom, A.P.Hyderabad.
2. The Director General, Dept. of Telecommunications,
New Delhi.
3. The Secretary, Union of India,
Ministry of Personnel, Public Grievances
and Pensions, (Dept. of Pensions
and Pensioner's Welfare) New Delhi
4. One copy to Mr. C. M. R. Velu, Advocate, CAT. Hyd.
5. One copy to Mr. N. V. Raghava Reddy, Addl. CGSC. CAT. Hyd.
6. One copy to HHRP. M. (A) CAT. Hyd.
7. One copy to D. R. (A) CAT. Hyd.
8. One spare copy.

pvm

20/11/97

I Court.

TYPED BY:

CHECKED BY:

COMPARED BY:

APPROVED BY:

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL
HYDERABAD BENCH AT HYDERABAD

THE HON'BLE MR.JUSTICE.
VICE-CHAIRMAN

And

THE HON'BLE MR. H. RAJENDRA PRASAD : M(A)

DATED:-

18/11/97

ORDER/JUDGMENT..

M.A.,/RA.,/C-A.No..

in

O.A.No. 1296/96

T.A.No. (W.P.)

Admitted and Interim directions issued.

Allowed

Disposed of with Directions.

Dismissed.

Dismissed as withdrawn

Dismissed for default

Ordered/Rejected

No order as to costs.

With S/ *Copied*

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| केंद्रीय प्रशासनिक अधिकार Central Administrative Tribunal DEPT/DESPATCH |
| 21 NOV 1997 |
| HYDERABAD BENCH |